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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 128

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, A BODY CORPORATE, ET AL.,
Appellants,

vs.

STATE MILK COMMISSION

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, appellants, The Arlington County Board, submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the Supreme Court of Appeals of Virginia entered in this cause.

Opinion Below

No opinion was written by the Virginia Supreme Court of Appeals, but it "refused" an appeal from the court below by an order which expressly "affirmed" the decree of the Circuit Court of the City of Richmond, Virginia; and ex-

pressly stated that the decree below was "plainly right". A copy of such order is attached hereto as Appendix A-1.

The letter-opinion of the Circuit Court of the City of Richmond dated June 20, 1953, is not reported but is attached as Appendix A-2. A copy is attached together with a copy of an interlocutory letter-opinion of September 26, 1951, attached as Appendix A-3.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia was entered on January 26, 1953, a copy of which is attached. A petition for appeal was presented to the Supreme Court of Appeals of Virginia on April 20, 1953.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, U. S. Code, Section 1257.

As this appeal challenges State court decisions upholding the validity of a legislative order of the Virginia State Milk Commission, prescribing milk prices, as described below; hence the following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case, upon the ground of violation of the U. S. Constitution, *Lake Erie & W. R. R. Co.* v. *Pub. Util. Comm.*, 249 U. S. 422, 424; *Live Oak Assn.* v. *R. R. Comm.*, 269 U. S. 354, 356; *Hamilton* v. *Regents*, 293 U. S. 245, 257-8. The "validity" of a State statute is sustained by State courts, for the jurisdictional purposes of Section 1257, when held applicable to a particular set of facts as against the contention tht such application is in violation of the Commerce Clause of the U. S. Constitution. *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 287-290.

Question Presented

Where an order of the Virginia State Milk Commission fixes minimum milk prices under State statute, for milk

sold to consumers in Arlington County, Virginia, by District of Columbia distributors who transport such milk by trucks directly from their processing plants in the District of Columbia to the consumers in Arlington County; is such price-fixing order, and its application to such sales, in violation of the Commerce Clause of the United States Constitution and contrary to the occupancy of the field under provisions of the Federal Marketing Agreement Act of 1937, as amended, Title 7, U. S. Code, sections 601 et seq., particularly section 608 (c).

Statutes Involved

1. Sections 3-359 and 3-381 of the Virginia Milk and Cream Act, as amended, 1950 Code of Virginia, as set forth in Appendix B hereof; and which are part of what is known as the Virginia Milk and Cream Act.

2. Sections 601, 608 (c) (1) and (5) (A) and (B), as set forth in Appendix C hereof; and which are part of what is known as the Federal Marketing Agreement Act of 1937.

Order of Virginia State Milk Commission

The order of the Virginia State Milk Commission at issue is Arlington-Alexandria Market-Order No. 4, issued January 17, 1951, effective January 21, 1951. It is simply a list or schedule of prices of milk and cream. This price list amended prior price lists by increasing milk prices by one-half cent per quart. As the State Milk Commission has contended throughout these proceedings that the prices are applicable to sales of District of Columbia distributors, there is no issue as to the terms of the order, but rather as to whether the Milk Commission had jurisdiction to issue it for such commerce; and there is no purpose in reproducing it as part of this statement. It is of record, of course.

Statement

This controversy was precipitated by the above-described Order No. 4 of the State Milk Commission, issued on January 17, 1951, effective January 21, 1951, unexpectedly increasing retail prices for milk delivered in Arlington by District of Columbia distributors, following a hearing which had not covered this subject.

Using the statutory procedure for judicial review under the Milk and Cream Act, the Arlington County Board and its members filed a petition for appeal in the Circuit Court of the City of Richmond, Virginia, contending that most of the milk purchased from District of Columbia distributors, by Arlington consumers, was moving in interstate commerce, and that the Virginia Milk Commission had no jurisdiction to regulate prices of such milk moving in interstate commerce by reason of the following provision of the Milk and Cream Act (section 3-381):

> "No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto."

Not only was the contention made that the State Milk Commission had no authority because of the Commerce Clause of the U. S. Constitution, but also that the regulation was not in conformity with the Federal Agricultural Marketing Agreement Act of 1937, which also provides for regulation of some milk prices. Annexed to the petition filed in the Circuit Court of the City of Richmond were certified copies of orders of the U. S. Secretary of Agriculture, which had established minimum price regulation of farmer-producer prices in the Washington area, which included Arlington, on November 3, 1945. Federal regulation of such prices ended in March 1947, as a result of a vote of the farmer-

producers in accordance with section 608 (c)(5)(Bi), Title 7, U. S. Code. (10 F. R. 13581 and 12 F. R. 2078)

A hearing was held by the Circuit Court of the City of Richmond, following which the matter was remanded to the State Milk Commission for further hearing as to facts in regard to the question of milk moving in interstate commerce. See letter opinion of September 26, 1951, attached in Appendix A.

A further hearing was held by the State Milk Commission on October 10, 1951. It was attended by representatives of Arlington County, the State Milk Commission, the producers, and the distributors located in both Virginia and the District of Columbia. It is of interest to note that for convenience the hearing was held in the District of Columbia. Most of the facts were given by the two leading District of Columbia distributors and by the State Milk Commission. However, the distributors and producers have not formally intervened in the court proceedings. Afterwards, the State Milk Commission received memorandum briefs, but certified the record to the Circuit Court without changing the order.

On this record at the hearing, the State Milk Commission announced its interpretation as to the scope of its authority and the application of the price-fixing order, as follows:

> "The regulations for the Arlington-Alexandria market area have been filed as part of these proceedings. They of course speak for themselves, but in any possible clarification as to the administrative practice with reference to them we will state that any sales by a producer to a distributor whose plant is located in Virginia are considered to come within the scope of the regulations.
>
> "Those that are made to the distributors whose plants are in Washington do not.

* * * * * * *

> "As far as sales from distributors to either stores or to homes, doorstep deliveries, we consider any such transactions as may occur within the Arlington-Alexandria market area as defined in the regulations to be under the control of the Milk Commission and to come within the scope of these regulations as regards to the pricing as set forth in the regulation."

At all times in this case, the State Milk Commission and its counsel, the Attorney General of Virginia, the distributors and producers have taken the position that milk deliveries in Arlington from District of Columbia distributors are subject to price-fixing by the Virginia Commission.

At the further hearing, facts were developed that about two-thirds of the milk sold in the Arlington-Alexandria Market came from District of Columbia distributors. Milk produced for the area came 48.73 percent from Virginia, 48.25 percent from Maryland, 1.45 percent from West Virginia, and 1.5 percent from Pennsylvania. About 50 to 65 percent of the sales of the two leading District of Columbia distributors were "retail", i. e., to consumers homes; the remainder was wholesale, to stores, restaurants, schools, and the like. About 75 percent of the retail home deliveries were on a pre-order basis; the remainder were changes in orders arranged between the consumer and the delivery driver; and about one-half of the consumers paid their monthly bills by checks sent to the distributors. About 40 to 50 percent of wholesale deliveries are on a pre-order basis from the two leading District of Columbia distributors. These facts are of importance because the Milk Commission has contended that the deliveries of distributors are all intrastate "peddling" transactions in Virginia, and subject to State price regulation.

After filing of the supplementary record, the Circuit Court issued a second letter-opinion under date of June 20,

1952, attached in Appendix A-2 hereof, sustaining the order of the Milk Commission, saying:

> "Due consideration has been given the supplemental record and the memoranda submitted by counsel. Under the authorities cited therein as applied to the facts in this case, the court is of opinion that the minimum price regulation in question is not a burden on interstate commerce; that the State Milk Commission can legally fix the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area from trucks of the District of Columbia distributors and that Arlington-Alexandria Market Order No. 4 should be sustained."

Following entry of an order in the Circuit Court, the Arlington County Board appealed to the Virginia Supreme Court of Appeals substantially on the same grounds presented here to the U. S. Supreme Court. The Attorney General of Virginia opposed the appeal on its merits, on behalf of the State Milk Commission; not involved were any procedural technicalities. After a brief ex parte presentation by counsel for appellant, the appeal was refused by order entered January 26, 1953 (copy attached in Appendix A-1 hereof), expressly affirming the judgment of the Circuit Court and saying that it was "plainly right".

The Arlington County Board is a body corporate with specific right to sue and be sued, and empowered to take such measures as it may deem expedient to secure and promote the health, safety, and general welfare of the inhabitants of said county. The members of said Board, who were individually named as complainants in the original action, were and their successors are individual consumers of milk in Arlington County. The Board appropriates funds to buy milk for its jail and schools. It's ordinance regulates sanitation standards for milk. The county is competitive with other parts of the Washington Metropolitan area, and its

prosperity requires that it be free from restraints not imposed in other areas. As elected representatives of the people, responsible to them and spending tax funds, it brings this appeal to carry out its statutory functions of bringing suit to protect the general welfare of its people.

The relief sought by the Arlington County Board is an order declaring the regulation of interstate commerce to be beyond the authority of the State Milk Commission, and that the Commission be required to revise its rules and regulations to exclude regulation over interstate commerce.

The Questions Are Substantial

Fundamentally the issues involved in this case are similar to the primary problems involved in several cases decided by the Supreme Court of the United States which followed principles contrary to the decisions in this matter in the Virginia Courts; see *Baldwin* v. *Seelig*, 294 U. S. 511, *Highland Farms Dairy* v. *Agnew*, 300 U. S. 608, affirming 17 F. Supp. 575, and *Hood* v. *DuMond*, 336 U. S. 525. Those cases held that a State cannot regulate sale or prices for milk moving directly in interstate commerce. This question is of importance nationally as well as locally, in price regulation of all commodities by States, as well as for milk. If allowed to stand, the Virginia decision would obliterate demarcation between State and Federal authority over interstate commerce as established in the above-cited cases and many others.

In effect, State regulation of interstate commerce for retail prices of milk has been substituted for Federal regulation of farmer-producer prices. Under the interpretation of the State Milk Commission, farmer-producers are free from State regulation in sales to District of Columbia distributors; but the converse is not so, according to the State Milk Commission which regulates competing prices between

Virginia and District of Columbia distributors of milk to consumers. It is the position of the Arlington County Board, however, that Federal regulation of farmer-producer prices is adequate for interstate commerce, without regulation of retail prices; that the County Board's exercise of powers to apply sanitation standards is adequate to protect consumers; and that consumers should enjoy the benefits of price competition from the interstate milk.

1. The Commerce Clause of the United States Constitution prohibits State regulation of prices for milk moving directly in interstate commerce. This was made clear in *Baldwin* v. *Seelig*, supra, in which the Supreme Court of the United States held that the State of New York could not constitutionally prohibit sales of milk, bottled in New York, because the distributor paid less for the milk to Vermont farmer-producers than prescribed under the New York Milk Control Act for New York farmer-producers. The difference between that case and this Virginia situation is only that Virginia attempts to regulate the retail prices, while New York tried to prohibit retail sales of milk for which the distributor paid less than New York wholesale prices. The policy and principles stated by the Supreme Court of the United States in that case would apply equally to both situations; and the Supreme Court has said:

> "Nice distinctions have been made at times between direct and indirect burdens. They are irrelevant when the avowed purpose of the obstruction, as well as its necessary tendency, is to suppress or mitigate the consequences of competition between the States." (294 U. S. 522)
>
> "Commerce between the states is burdened unduly when one state regulates by indirection the prices to be paid to producers in another, in the faith that augmentation of prices will lift up the level of economic welfare, and that this will stimulate the observance of san-

itary requirements in the preparation of the product." (294 U. S. 524)

"It is one thing for a state to exact adherence by an importer to fitting standards of sanitation before the products of the farm or factory may be sold in its markets. It is a very different thing to establish a wage scale or scale of prices for use in other states, and to bar the sale of the products, whether in original packages or in others, unless the scale has been observed." (294 U. S. 528)

"What is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic barrier against competition with the products of another state or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. They are thus hostile in conception as well as burdensome in result. The form of the packages in such circumstances is immaterial, whether they are original or broken. The importer must be free from imposts framed for the very purpose of suppressing competition from without and leading inescapably to the suppression so intended." (294 U.S. 527)

The stand of the Virginia Milk Commission is a reversal of the position taken in *Highland Farms Dairy* v. *Agnew, supra.* There "Highland" corporation, a distributor in the District of Columbia, sold milk to stores owned individually by Luther High in Arlington. The contention there was that both wholesale and retail sales were in interstate commerce and not subject to State regulation; but the statute was interpreted differently, and the Supreme Court of the United States said (300 U. S. 614-615):

"But Highland is not subject to the provisions of the act, and so the Milk Commission has ruled. No matter what the definition of a distributor may be, sales are not affected by any restriction as to price unless made

> within the boundaries of a designated market area. The sections quoted in the margin point fairly to that conclusion. Highland in Washington may sell to High in Virginia, and High may buy from Highland at any price they please. Not till the milk is resold in Virginia within a market area will the price minimum apply, and then only to the price to be charged on the resale."

But as quoted on page 5 of this Statement, the Milk Commission has reversed itself and now holds that the sales from District of Columbia distributors to stores are subject to the State statute, directly contrary to the Supreme Court's decision; and now also holds that retail sales are similarly subject to the statute. However, there is no difference in principle as between retail and wholesale sales, *Schollenberger* v. *Pa.*, 171 U. S. 1. Therefore, the rule in the *Highland Case* prohibits price regulation by Virginia of the sales from District of Columbia distributors directly to Arlington consumers.

In *Hood & Sons* v. *Du Mond*, supra, a New York commission denied a license to purchase milk in New York for export to Massachusetts. The Supreme Court of the United States held this to be contrary to the Commerce Clause of the Constitution of the United States, and said:

> "Baldwin v. Seelig, 294 U. S. 511, is an explicit, impressive, recent and unanimous condemnation by this Court of economic restraints on interstate commerce for local economic advantage, but it does not stand alone. This Court consistently has rebuffed attempts of states to advance their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state, while generally supporting their right to impose even burdensome regulations in the interest of health and safety." (336 U. S. p. 535)

The Supreme Court held in that case that the Commerce Clause protected "every consumer" to "free competition"

(336 U. S. 539). There can be no such free competition under the Virginia Statute and the regulation of minimum prices of milk moving *directly* in interstate commerce.

2. The Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. Sections 601 et seq. particularly section 608 (c), occupies the field of regulation of interstate commerce in milk, to the exclusion of State regulation not in conformity with the Federal plan. In *Hood & Sons* v. *Du Mond*, supra, the Supreme Court said (336 U. S. pp. 544-545):

> "These sections and reports indicate that it is the deliberate policy of the Congress to prevent federal officers from placing barriers in the way of interstate flow of milk. While a statutory prohibition against federal interference with certain phases of it may not always imply that the state too is precluded, it is obvious that a State limitation on export for the benefit of its own consumers is not authorized by this Federal Act."

The court held that the New York State regulation was invalid because not authorized by the Federal statute, as well as because it violated the commerce clause (336 U. S. 545).

Here we have the Virginia State Milk Commission placing price restrictions upon interstate commerce, without any authority from the Federal statute. In fact, the producers' rejection of Federal regulation has placed the Virginia Milk Commission in a substitute status, to fix prices actually followed in the whole Washington metropolitan area, both interstate and intrastate. Not having the authority from Congress to do so, the Virginia Milk Commission should not be permitted to exercise any regulatory function over interstate commerce.

It is submitted that the affirmation of the validity of the order of the Virginia State Milk Commission by the Supreme Court of Appeals of Virginia and by the Circuit Court of

the City of Richmond, was contrary to the Commerce Clause of the United States Constitution and the Agricultural Marketing Agreement Act of Congress; and those decisions of the Virginia courts should be reversed.

Counsel for appellants believes that the questions presented by this appeal are substantial, and that they are of public importance.

Respectfully submitted,

MALCOLM D. MILLER,
Counsel for Appellants,
Munsey Building, Washington 4, D. C.

APPENDIX "A-1"

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Monday the 26th day of January, 1953.

The petition of the County Board of Arlington County, Virginia, for an appeal from a decree entered by the Circuit Court of the City of Richmond on the 22nd day of July, 1952, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and State Milk Commission was defendant, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the said decree is plainly right, doth reject said petition and refuse said appeal, the effect of which is to affirm the decree of the said circuit court.

APPENDIX "A-2"

CIRCUIT COURT OF THE CITY OF RICHMOND

Richmond, Virginia

June 20, 1952.

Hon. J. Lindsay Almond, Jr.,
Attorney General of Virginia,
Richmond, Virginia.
Hon. Thomas M. Miller,
Assistant Attorney General of Virginia,
Richmond, Virginia.
Mr. Malcolm D. Miller,
Attorney at Law,
Washington, D. C.
Mr. Roger J. Whiteford,
Attorney at Law,
Washington, D. C.

Re: The County Board of Arlington County, Virginia, a body corporate, et als. v. State Milk Commission

GENTLEMEN:

By a decree entered October 9, 1951, the court held that the notice which preceded the public milk hearing in the

Arlington-Alexandria Market Area on January 11, 1951, was sufficient and lawful; that the State Milk Commission had authority to raise, lower or refuse to change the price of milk in said market area and that Arlington-Alexandria Market Order No. 4 increasing milk prices was not unreasonable or capricious. Since the record was devoid of factual basis for a consideration of the question of interstate commerce as related to said market area, the court by said decree remanded the record to the State Milk Commission for the taking of such additional testimony as may be offered by the petitioners, the defendant or any other interested parties relating to the moving of milk in interstate commerce in said market area, the Commission was directed to certify and file with this court such additional testimony taken, and if said order No. 4 be amended by the Commission to file same with this court. The Commission filed the additional testimony but did not amend said order No. 4.

Due consideration has been given the supplemental record and the memoranda submitted by counsel. Under the authorities cited therein as applied to the facts in this case, the court is of opinion that the minimum price regulation in question is not a burden on interstate commerce; that the State Milk Commission can legally fix the minimum sale price of fluid milk sold and delivered to consumers in the Arlington-Alexandria Market Area from trucks of the District of Columbia distributors and that Arlington-Alexandria Market Order No. 4 should be sustained.

Upon presentation of a proper decree, same will be entered.

Yours very truly,

HAROLD F. SNEAD,
Judge.

s/s

APPENDIX "A-3"

CIRCUIT COURT OF THE CITY OF RICHMOND

Richmond, Virginia

September 26, 1951.

Hon. J. Lindsay Almond, Jr.,
Attorney General of Virginia,
Hon. Thomas M. Miller,
Assistant Attorney General of Virginia,
Library Building,
Richmond, Virginia.
Mr. Malcolm D. Miller,
Attorney at Law,
Munsey Building,
Washington 4, D. C.

Re: The County Board of Arlington County, Virginia, a body corporate, et als. v. State Milk Commission

GENTLEMEN:

After due consideration of the petition for appeal, the answer thereto, the record certified to the court by the State Milk Commission, the oral argument and memoranda submitted by counsel, the court is of opinion that the contention of the petitioners that the order of the commission designated as Arlington-Alexandria Market Order No. 4, increasing milk prices was unreasonable and capricious, because it was issued after notice and hearing which did not give actual notice or bring in issue the matter of increasing prices and that the issue presented by the producers and considered at the hearing was limited to the question whether the seasonal reduction should occur, is without merit. The notice of the public milk hearing reads in part "• • • for the purpose of considering the entire price structure concerning the sale of milk and to consider an adjustment in any or all prices of the sale of milk for the following markets, who will be heard in the order listed, Arlington-Alexandria, Manassas, Fredericksburg • • •". The record disclosed that said notice of hearing was duly published in eleven newspapers having circulation in the milk area. As to the contention that the issue was limited

to the question whether the seasonal reduction should occur, the court is of opinion that after having given the above required notice of hearing and having conducted said hearing the commission had authority to raise, lower or refuse to change the price of milk.

In regard to the second contention of the petitioners that the State Milk Commission is without authority or jurisdiction to fix the prices of milk moving directly in interstate commerce, attention is directed to Section 3-371 (3) of the Code of Virginia, 1950, which provides in part that in an appeal to this court from an order of the State Milk Commission, the case shall be heard upon the record certified to the court by the commission. The defendant by counsel contends that there is no evidence in the record that milk passes in interstate commerce and consequently there is no factual basis for a consideration of the question of interstate commerce by this court. As the record is presently constituted, the court is of opinion that it should not consider this question.

The above quoted section of the Code further provides "* * * but the court may, in proper cases, remand the record to the commission for the taking of such further testimony as was not available upon the hearing appealed from, or such other testimony as the court shall provide may be taken."

The court is of opinion that this is a proper case in which to remand the record to the commission in order to permit the petitioners to offer material and relevant testimony in regard to the question of milk moving in interstate commerce. In light of additional testimony given, the commission should give consideration as to whether or not Arlington-Alexandria Market Order No. 4 should be amended or revised. The commission shall certify and file with the court such additional testimony and if said order is amended or revised same shall also be filed with this court.

Upon presention of a proper decree, same will be entered.

Yours very truly,

HAROLD F. SNEAD,
Judge.

s/s

APPENDIX "B"

EXTRACTS, VIRGINIA MILK AND CREAM ACT, 1950 CODE OF VIRGINIA:

Section 3-359. "The (Virginia Milk) commission, after public hearing and investigation may fix the prices to be paid producers or associations of producers by distributors in any market or markets, may fix the minimum and maximum wholesale and retail prices to be charged for milk in any market, and may also fix different prices for different grades of milk. In determining the reasonableness of prices to be paid or charged in any market or markets for any grade, quantity, or class of milk, the commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operation, processing, storage and delivery charges, the prices of other foods, and the welfare of the general public."

Section 3-381. "No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto."

APPENDIX "C"

EXTRACTS: AGRICULTURAL MARKETING AGREEMENT ACT OF 1937, AS AMENDED, TITLE 7, U. S. CODE:

Section 601: It is declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.

Section 608: (1): The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, asso-

ciations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in sections 601-608, 608a, 608b, 608c, 608d-612, 613, 614-619, 620, 623, 624 of this title as "handlers". Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

* * * * * * *

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representa-

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tive period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for in this section:

* * * * * * *